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admit that the policy of Louis IX. in concluding the peace of 1259 with England was mistaken—though much might be said on the other side—yet one can scarcely admit—bearing in mind the vain efforts of the French to drive the English from Gascony—that a very slight effort on the part of Louis would have been sufficient to expel them. Nor does this seem in harmony with M. Corbin's view of the feelings of the English people. In most cases, however, M. Corbin, where his view is at variance with those usually held, brings a considerable number of facts to his support and makes out a case which, if not conclusive, is, at least, well worthy of consideration.

To judge by the bibliographies which accompany each chapter, the work is based on a wide reading of the literature upon the subject available in French and English. As the author's aim is not to investigate details but to present broad outlines, minute examination of original sources is scarcely called for. On the whole the work has been prepared with care, and is a suggestive contribution to French history. It is to be hoped that subsequent volumes will continue the history of French foreign policy down to modern times.

FRANK BURR MARSH.

*The Origin of the English Constitution.* By GEORGE BURTON ADAMS, Professor of History, Yale University. (New Haven: Yale University Press; London: Henry Frowde, Oxford University Press. 1912. Pp. xii, 378.)

THIS book contains some four chapters of new material. The rest consists of reprints of various articles published at different times in the *English* and *American Historical Reviews*. There is no objection to such republications. Quite the contrary, to those who do not have access to the files of the reviews, such a collection from the published writings of a master is of inestimable value; and even for one who has either of the great *Reviews* at his elbow, it is much, not only to have such a collection in handy form and properly indexed, to consult, but also to get the last words of the author; as in this case, such reprints are really new editions.

These essays, moreover, are not mere fugitive pieces but are closely related and designed to set forth in a progressive whole, the author's theory of "the feudal origin of the English Constitution", and the function of the Great Charter in effecting "the transition of the fundamental principle of feudalism into the fundamental principle of the modern Constitution" (preface, p. vii). This thesis is restated again and again and with admirable clearness and boldness. Thus on page 167:

We now return to a more specific formulation of our original problem: from what source and at what time did there enter English history as an active influence the principle that there is a body of law above the king which he may be compelled to obey if he is unwilling to do so? And, it may be added, how did there begin a line of experimenting in the embodiment of this principle in institutional forms? It is the thesis

of this book that this principle was derived directly from feudalism, and that it was the work of the Great Charter of 1215 to transfer it from that system then falling into decline to the newer governmental system just beginning to be formed, and in so doing to give it its first institutional expression. In this fact we have, I believe, the explanation of the influence and significance of the Great Charter in English history.

Again on page 185, the author thus sums up his argument:

The origin of the English limited monarchy is to be sought not in the primitive German state, nor in the idea of an elective monarchy or a coronation oath, nor in the survival of institutions of local freedom to exert increasing influence on the central government. Though all these were contributory, combined they could not alone have produced the result. The principle which moulds and shapes all elements into the great result came from feudalism.

Stated simply and baldly, this thesis compels us in our study of the English constitution to discard what we have been so long and patiently learning about the Anglo-Saxon or Teutonic elements of the constitution and begin with the Norman Conquest. "The history of the English Constitution upon English soil begins with the Norman Conquest" (p. 16). The Anglo-Saxon institutions are valuable in the study of local institutions, but what the author calls "the central government" is feudal and Norman in its origin.

Right here, however, the critic naturally will raise his first question: Is this hard and fast differentiation between local and central government sound in any treatment of English institutions of the later eleventh century? But, granting that such a sharp distinction of powers and functions be possible, when we ask for the data to prove that this so-called central government of the Norman-Angevin kings is all Norman and all feudal in its origin, the author admits that he has no data for proof, that his contention is a matter of faith, and that this faith is born of a prepossession that has grown out of his earlier studies of Continental institutions. Here certainly, Mr. Adams opens himself to a far more serious criticism, that of method: his structure rests not upon data but upon a theory.

His argument may be briefly put: In the later twelfth century we find much in the English central government and much in the feudal institutions of England that may be paralleled in Normandy and on the Continent. Hence these institutions came from Normandy and the Continent, and must have been introduced into England by the Norman Conquerors. The weak place in this argument is of course our ignorance of Norman institutions prior to the twelfth century—an ignorance which the author frankly confesses (p. 21, note 10). Three generations after the Conquest, we begin to know something of contemporary Norman institutions, and the resemblances are striking enough, particularly in some matters of administrative machinery and in procedure. But the contrasts are even more numerous and quite as striking. Nor is the reservation of the author sufficient; these contrasts are not all of local

institutions, moreover, even of the resemblances, where positive evidence fails, it is dangerous to dogmatize. The danger of such a method has been too often exposed, to need further comment here.

But aside from the question of method, the author shuts his eyes to the continued influence of Anglo-Saxon legal ideas after the Conquest. Further he assumes that feudalism in England in the eleventh century was the same in kind and influence as feudalism in the thirteenth century. It is true that he admits that Anglo-Saxon legal ideas had their influence and that feudalism in England also had developed between the times of William I. and John, but he makes no effort to discover the influence of the one or to contrast the feudalism that was introduced by William and the feudalism that forced John to grant the charter. In other words, in his argument the author ignores his admissions and virtually proceeds upon the supposition that feudalism in its developed form had come in with William and his fighting barons.

Prepossessed by this idea, the author fails to interpret Magna Carta quite as signally as those writers whom he justly condemns, who used to find here the origin of the English Parliament or the trial by jury or the Habeas Corpus Act. No one, of course, will contest his statement that Magna Carta is a feudal document. The men who drew it up lived in a feudal age, thought feudal thoughts about feudal things, and expressed them in feudal words.

But the feudalism which they knew was a developing feudalism that had by no means reached its definitive form, and hence its customs were still subjects of dispute and of definition. It goes without saying that John was a wretched tyrant, but his tyrannies consisted quite frequently not so much in violating existing law or precedent, but like those of Charles I., in distorting law or precedent to justify what were virtually new exactions. In some cases at least, precedents were so deeply in conflict that the barons were not certain in their own minds as to the extent or the form of the demands which they should make upon the king. Hence the barons were engaged quite as much in reaching final definition as in restatement. And hence far more of the charter than the author admits is really legislative, in the modern sense.

Further, is not Mr. Adams himself quite as guilty of reading modern ideas into the Anglo-Norman constitution of the twelfth century when he speaks of "the Curia Regis" or "the Magnum Concilium", or of "the legislative power of the Common Council of the realm"? He is conscious that his language does not exactly harmonize with his data, and he tries to save himself by the terms—"the little Curia" and "the Great Curia"—in this relation, creatures of the imagination quite as much as Kemble's "Ga".

Now the mischief lies in this modern and English use of the definite article, implying that there were legislative or administrative institutions such as *the* modern Parliament or *the* American Congress existing by the side of the king and with him sharing particular functions of administration or legislation. Now *the* king was the only permanent and

continuous institution of the Anglo-Norman constitution. It was "of him" as Elizabeth would say, to summon a council of his grandees, a council little or big, as he needed their help in administration or their moral support in some new or arduous enterprise. But such a council was transient; its life ended with the session.

Again an objection may be raised to the narrow limits which the author sets to constitutionalism. As he develops his subject, constitutionalism, he apparently limits it to the legislative function of government and his argument may be thus stated: Until a legislative body is developed by the side of the king, with co-ordinate and checking powers, there is no constitutional government. Hence the development of the English constitution is the development of this legislative body. And since no such body existed in the Anglo-Saxon period, and did exist in the Norman-Angevin period, particularly exemplified in the commune concilium of the Great Charter, and since this body is of Norman feudal origin, therefore the English constitution did not exist in the Anglo-Saxon period and is of Norman feudal origin.

Now the military, the administrative, and the judicial functions of government are quite as important from the point of view of the constitution as the legislative function, particularly at a time when all institutions are more or less in germ, and the differentiation of function exists only in suggestion. Moreover, at such a time the recognition of new functions of government or the creation of appropriate constitutional machinery, whereby such functions may be legally and regularly exercised, is quite as frequently suggested by existing and already defined institutions. Now the long recognized authority of customary law, even over an Anglo-Saxon king, the early exemplification of the representative idea in the ordinary machinery of police and justice, the recognition of a dichotomy of the great landholding class at the Exchequer table, applied under the constant pressure of the ever increasing fiscal needs of the thirteenth-century king in an ever widening sphere of governmental activity, and reacted upon by the natural reluctance of human beings to pay, if not new taxes, at least taxes under new and unwonted conditions, certainly produced the public law of the thirteenth century. That this law is expressed in feudal language, must not confuse us nor lead us to ignore the deeper currents of legal thought and relations that have their sources far back in the twilight region of Anglo-Saxon law—currents that were still powerful in the thirteenth century and continued to flow long after feudal form and feudal expression had been discarded with the panoply of the feudal knight.

The author supports his thesis by a broad range of first-hand acquaintance with ancient texts and modern authorities, material which he uses with characteristic accuracy and discrimination. But does he mean what he says on page 115, when speaking of the Assize of Clarendon he declares that its purpose was "to find out who had committed a given crime"? Again on page 119, does not the author confuse the fore oath with the trial by compurgation?

The book is difficult of review. There are many statements in which the reader is by no means ready to accept the author's position as final; and yet the opportunities for misunderstanding and misconstruction are so many, that the reviewer before raising a question in print, would much rather sit down and have it out with the genial author. This doubt of the reviewer is due not to ambiguity or inadequate statement, but wholly to the nature of the argument which has led the author frequently into the discussion of obscure texts where the use of a word or the turn of an expression may easily lead to misunderstanding or unintentional misrepresentation on the reviewer's part. The book is of gravest import and in the future must figure conspicuously in the literature of this important subject.

BENJAMIN TERRY.

*The Holy Christian Church: from its Remote Origins to the Present Day.* By R. M. JOHNSTON. (Boston and New York: Houghton Mifflin Company. 1912. Pp. xx, 331.)

Not for the intellectually and morally sluggish, to whom religion means "the maximum of respectability with the minimum of thought", does Professor Johnston write, but for the reflective and courageous minds, responsive to the thought of the age and seeking to bring religion into harmony with it. Nor is it to add to the "glut of critical snippets" of the specialists that he takes pen in hand, but to "seize the interrelation of a hundred factors, not to manufacture a new formula". That the studies upon which the author's reputation has been built scarcely suggest his peculiar fitness for this latest undertaking, he himself acknowledges. But "the history of the Christian Church as a whole has never been written"; it is time we had a synthesis; and Professor Johnston feels impelled to essay the task. His point of view is "that of today" (of the elect, however, not of the "ordinary" or "average", intellect), that is, "evolutionary and fluid", a point of view with which Christianity is not in harmony, because it still bears the stamp fixed upon it by inelastic decadent Hellenism and rigid Roman imperialism. The materials, for the greater part, are evidently drawn from secondary authorities, and the book abounds in misconceptions and misstatements which even a cursory reading of the sources would have obviated. But in such a study, says the author, the essential thing is the proportion, to be maintained at all costs. How does he maintain it? Ten chapters for the first six centuries, three chapters for the Middle Ages, three chapters for all the rest. Truly, "many mangled remains have been strewn along the path" ("with compunction and regret", pleads the author). Up to Gregory I. he steers his craft, bearing a carefully selected cargo, with a fairly steady hand, keeping well clear, however, of the theological current, which is, after all, only a "theoretical incident". But from Gregory on, the word is "rush", and we are carried along at a bewildering rate. We realize that the proportion is the essential thing and must